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June 11, 2001

S. C. PUBLIC SERVICE COMMISSION
JUN 11 2001
RECEIVED

The Honorable Gary E. Walsh
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996
Docket No. 2001-209-C

Dear Mr. Walsh:

Enclosed for filing please find the original and 15 copies of BellSouth Telecommunications, Inc.'s Reply to NewSouth Communications' and South Carolina Cable Television Association's Motion to Reconsider Scheduling Decision in the above-referenced matter on behalf of BellSouth Telecommunications, Inc.

Sincerely,

CN Watson

Caroline N. Watson

CNW/nml

Enclosure

Legal
Retained
2 copies

PUBL SOUTH CAROLINA

In the Matter Of	)	
Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	)	Docket No. 2001-209-C

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO NEWSOUTH COMMUNICATIONS' AND SOUTH CAROLINA CABLE TELEVISION ASSOCIATION'S MOTION TO RECONSIDER SCHEDULING DECISION

BellSouth Telecommunications Inc. ("BellSouth") hereby files its Reply to NewSouth Communications' ("NewSouth") and South Carolina Cable Television Association's ("SCCTA") Motion to Reconsider Scheduling Decision ("Motion"). In the Motion, NewSouth and SCCTA argue that the Public Service Commission of South Carolina ("Commission") should delay unnecessarily the benefits of interLATA competition to South Carolina consumers. To the contrary, public interest demands that the hearing be held as scheduled by the Commission on July 23, 2001, and that it not be delayed.

The procedural schedule set forth by this Commission provides all parties a meaningful opportunity to file testimony and to present live witnesses in support of their positions. The Commission will, therefore, have ample evidence upon which to make a sound, reasoned judgment about BellSouth's compliance with the competitive checklist. Interestingly, if the CLECs' believe that BellSouth is not in compliance, why would they keep seeking delay? The fact of the matter is that the CLECs know that BellSouth is in compliance with the Act, and they are using procedural weapons to attempt to delay BellSouth's entry into the interLATA market. Delaying this process will serve no purpose other than to deny South Carolina consumers the benefits of a truly competitive telecommunications market.

DISCUSSION

A. THE COMMISSION SHOULD DENY THE MOTION BECAUSE IT DOES NOT PRESENT ANY NEW ARGUMENTS OR MISTAKES OF LAW.

As the Commission is aware, the purpose of a motion for reconsideration is to bring to the Commission's attention material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or abuse of discretion. Reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order. Because SCCTA and NewSouth have failed to raise any issues not previously considered by the Commission, the Motion should be denied.

On May 18, 2001, BellSouth requested that a hearing date be reserved for the above-referenced proceeding. Several intervening parties, including AT&T, submitted objections to BellSouth's request. In its response, AT&T raised every substantive argument made in the Motion currently pending before the Commission. Specifically, SCCTA and NewSouth argue that this Commission should not act until Florida has completed its third party OSS test and until Georgia has ruled on BellSouth's 271 application. AT&T made the identical arguments in its Response. In fact, in numbered paragraph 1 of their motion, NewSouth and SCCTA simply incorporate the objections filed by AT&T in opposition to BellSouth's request for a hearing, even though the Commission rejected the very same objections in its scheduling order. The Commission did not find any of these objections persuasive and issued an order in which it granted BellSouth's request and set this matter for hearing on July 23, 2001. *See* Order No. 2001-532. SCCTA and NewSouth have not presented any grounds upon which the Commission should reconsider its decision.

In addition, SCCTA and NewSouth argue that the hearing schedule denies the parties due process pursuant to Section 1-23-320 (e) of the South Carolina Code. Given the Commission's obligation to comply with the law, however, BellSouth presumes that the Commission considered all due process implications of its schedule in its previous ruling. The Motion presents no reason to reconsider the schedule.

B. THE STATUS OF LOCAL COMPETITION IN SOUTH CAROLINA DICTATES THAT THE COMMISSION SHOULD ACT NOW.

The most compelling reason to proceed with the hearing as scheduled is the current status of competition in the local market in South Carolina. BellSouth has irrevocably opened this market to competition, and the vigorous contest for market share in South Carolina is by itself a sufficient basis for the Commission to move forward with the hearing on July 23. BellSouth estimates that as of March 2001, competitive local exchange carriers ("CLECs")

served approximately 151,000 lines in South Carolina, which translates into approximately 9.4% of the local market. These figures are comparable to market share figures in states in which Regional Bell Operating Companies have already gained long distance relief. In Texas, for example, CLECs had captured between 8.4% - 14.0% of the local market when Southwestern Bell Corporation ("SBC") gained approval for entry into the interLATA market, and in Oklahoma, CLECs had a market share of between 5.5% - 9.0%. There is no doubt that local competition is thriving in South Carolina.

There can be no serious dispute that BOC entry into long distance has triggered competition across all telecommunications markets, including increased competition in the local market. As former FCC Chairman Kennard so aptly noted, "[w]e need only review the state of competition in New York and Texas to know the Act is working." William E. Kennard, Chairman, FCC, *Statement Before the Committee on the Judiciary United States House of Representatives on H.R. 1686 – the "Internet Freedom Act" and H.R. 1685 – the "Internet Growth and Development Act,"* July 18, 2000. Other experts have agreed, concluding that "Bell Atlantic's entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for consumers, generally across the board." Bruce Hight, *SW Bell Will Start Selling Long-Distance on Monday; AT&T, WorldCom*, Austin American Statesman, July 7, 2000, at A1 (quoting Sam Simon, Chairman, Telecommunications Research & Action Center). The FCC has found that states in which a BOC has been granted long distance approval enjoy the greatest level of competitive activity. For example, according to the FCC, access lines served by CLECs in New York grew over 130% from the time the FCC granted Verizon's long distance application in December 1999 to December 2000. In Texas, CLECs gained over 500,000 end-user lines in the six months after the FCC granted SBC's request for interLATA relief – an increase of over 60%. Finally, CLEC market share in New York and Texas (the two states that had 271 approval during the reporting period ending December 2000) is over 135% and 45% higher, respectively, than the national average. *FCC Local Competition Report* at p. 1.

C. THE COMMISSION CAN AND SHOULD RELY ON COMMERCIAL USAGE.

The FCC has stated repeatedly that "the most probative evidence that OSS functions are operationally ready is actual commercial usage in the state for which the BOC seeks 271 authorization." *SWBT KA/OK Order,* p. 105. It is only in cases in which actual commercial data is unavailable that other means of proof are relevant. In those situations, the FCC will consider "the results of carrier-to-carrier testing, independent third party testing, and internal testing in assessing the commercial readiness of a BOC's OSS." *Id.*

As evidenced by the numbers discussed above, competition in the local market is thriving in SouthCarolina. BellSouth will submit to the Commission performance data evidencing both commercial usage of BellSouth's OSS and the level of performance with which BellSouth provides CLECs access to its OSS. BellSouth expects its performance data to demonstrate that BellSouth's OSS are operationally ready and that it, therefore, is complying with the competitive checklist. Thus, the CLECs' attempt to make the third party test the lynchpin of BellSouth's case is misguided. In large part, BellSouth will prove its compliance with Section 271 through commercial usage and performance data.

D. THE COMMISSION SHOULD NOT WAIT ON THE COMPLETION OF THE FLORIDA TEST.

Despite the compelling reasons to proceed as set forth in this Commission's scheduling order, NewSouth and SCCTA have asked the Commission to reverse its decision and delay the entire South Carolina application process. Their primary argument is that the hearing comes prior to completion of third party testing of BellSouth's Operational Support Systems ("OSS") in Florida and Georgia.[1] As BellSouth has demonstrated in its filing, however, the Commission can and should rely on the results of the Georgia test. The Georgia test meets all of the important criteria identified by the FCC in its *Bell Atlantic Order,* and is comparable to the tests conducted in New York and Texas.

The Georgia test meets all of the criteria established by the FCC in its decision on Bell Atlantic's New York application. Specifically, in the Georgia test, like the New York test, KPMG was an independent tester; conducted a military-style test; made efforts to place itself in the position of an actual market entrant; and made efforts to maintain blindness when possible. In compliance with FCC decisions, the Georgia test is a focused test that appropriately concentrates on the specific areas of BellSouth's OSS that had not experienced significant commercial usage. As set forth in the Master Test Plan, the test covered all five core OSS processes (pre-ordering; ordering; provisioning; maintenance and repair; and billing); electronic interfaces to the OSS (TAG, EDI, TAFI, ECTA, ODUF, ADUF, CRIS and CABS); UNE analog loops (with and without number portability); UNE switched ports; UNE business and residence port-loop combinations; LNP; and normal and peak volume testing of the electronic interfaces for pre-ordering; ordering, and maintenance and repair using a representative mix of resale

[1] SCCTA and NewSouth argue that the Georgia Third Party Test is unfinished. As BellSouth explained in its filing, there are certain aspects of KPMG's metrics review that are ongoing. These items, however, are not relevant to a 271 inquiry as evidenced by the fact that the Georgia Commission is prepared to move forward without the completion of the metrics audit.

services and UNE transactions. The Georgia test also provides for an audit of BellSouth's flow-through Service Request Report for the latest three months of data.

In a Supplemental Test Plan, the Georgia Commission expanded the test to include an assessment of the change management process as it applied to the implementation of Release 6.0 ("OSS99"); an evaluation of pre-ordering, ordering and provisioning of xDSL loops; a functional test of resale pre-ordering, ordering, provisioning, maintenance and repair, and billing transactions for the top 50 electronically orderable retail services available for resale that have not experienced significant commercial usage; and an evaluation of the processes and procedures for the collection and calculation of performance data. In all, the Georgia Test covered over 1,170 test criteria.

The Georgia test included significant opportunity for CLEC input. The Georgia Commission considered input from the CLECs when designing the scope of the test plan. Moreover, CLECs had the opportunity to file comments on both the Master Test Plan and the Supplemental Test Plan, as well as KPMG's periodic status reports. Beginning January 20, 2000, KPMG invited the CLECs to participate in weekly conference calls to discuss the status of the test, including exception resolution, and to entertain any questions from the CLECs about the progress of the test.

On March 20, 2000, KPMG issued its final report to the Commission. Less than 2% of the test criteria were deemed "not satisfied." For those small number of test criteria that were not satisfied, KPMG found that "the Commission will be able to monitor these issues on an ongoing basis through the performance measures and/or penalty plans in place that address the timeliness of BellSouth responses, service order accuracy, and percent provisioning troubles within 30 days."[2] The Commission will have the same performance measures and data upon which to monitor BellSouth's on-going compliance.

The Georgia test is comparable in scope to the third party tests conducted in New York and Texas that the FCC has approved. The Georgia test included the same functionality review of OSS Business processes as New York and Texas. In addition, all three tests assess OSS scalability. All three tests included normal volume and peak testing of the interfaces. Moreover, the Georgia test reviewed all documentation for maintenance, updates and communication, as did New York and Texas. Like New York and Texas, the Georgia test assessed change

[2] *See* Letter to Leon Bowles from Michael W. Weeks, March 20, 2001, p. 2, in the testimony of Ronald M. Pate on file with the Commission.

management including the notice and completion intervals; release versioning policy; defect management process; and OSS interface development review. All three tests included functional testing of pre-ordering and ordering. All three tests provisioned orders, evaluated provisioning processes, and tested the performance of specific provisioning measures. Georgia and New York tested basic functionalities of Maintenance and Repair, and included a M&R process parity evaluation. In some cases, the Georgia test went beyond the tests in New York and Texas. For example, the Georgia test included manual ordering for xDSL loops while the New York test did not. Moreover, the Georgia test included a more extensive performance metrics evaluation than either New York or Texas.

In short, the Georgia Test is thorough and robust and will provide the Commission with ample evidence of BellSouth's compliance with the competitive checklist for those areas for which BellSouth does not have commercial usage in South Carolina. As the Commission previously determined in its initial ruling, there is no reason to delay the hearing in this matter, or delay the benefits of long distance competition to South Carolina consumers.

E. THE COMMISSION'S SCHEDULE PROVIDES ALL PARTIES DUE PROCESS.

Finally, NewSouth and SCCTA maintain that they will not have sufficient time to prepare for the July 23 hearing due to the amount of material submitted by BellSouth. This is a misleading argument. First, although BellSouth's filing was voluminous, the majority of the documents submitted by BellSouth are ordering guides and other public material that are generally available to CLECs on the Internet and are used by CLECs to do business with BellSouth. Because CLECs must be familiar with such material in order to operate their businesses, few documents and very little information among these filings should be unfamiliar to NewSouth and SCCTA. Consequently, they will not be prejudiced in any way by having to abide by this Commission's scheduling decision.

Second, NewSouth has the opportunity to be involved in Section 271 proceedings in many states, including Alabama, Georgia, Florida, Louisiana and Mississippi. The CLEC reply dates for all of these states are before this Commission's hearing date of July 23. Because it will already have responded to many of BellSouth's applications, all of which are almost identical to the one filed with this Commission, NewSouth should be able to prepare for the scheduled hearing.

Finally, there is no need to delay the hearing because the time provided to the parties in this case is comparable to what is customarily granted. In fact, BellSouth served all parties with all of the original filed documents on May 16, 2001, as a courtesy in order to maximize the amount of time each party would have prior to

the hearing and without the parties having to file a Petition to Intervene. In its scheduling order, the Commission granted NewSouth and SCCTA, and any other party involved in this proceeding, seven weeks to prepare for the July 23 hearing. It would therefore be improper to further delay these proceedings.

At the end of their motion, NewSouth and SCCTA maintain, without justification, that the present schedule is insufficient to allow this Commission to review adequately BellSouth's application and to make a meaningful recommendation to the FCC as to whether the Section 271 application should be granted. This argument is both presumptuous and misplaced, however, as the Commission has already determined, regardless of the objections filed by all intervenors, that July 23, 2001, is an appropriate date on which to commence the hearing on the above-captioned matter. Moreover, SCCTA and NewSouth conveniently choose to ignore the five years of work this Commission has undertaken to open the local markets. While SCCTA and NewSouth may believe that the Commission has not been active, the status of local competition in this state says otherwise. The local market is irrevocably open, a fact of which the Commission should be proud. It is now time to move forward and open the long distance market. BellSouth wholeheartedly agrees with the Commission that the current schedule provides ample time for each party to present its position on BellSouth's application and that it is in the public interest to commence the hearing on July 23, 2001.

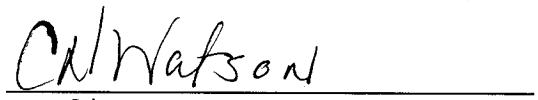
CONCLUSION

NewSouth's and SCCTA's sole purpose for submitting the motion is to impede and delay the review of BellSouth's application to provide interLATA services. BellSouth is in full compliance with Section 271. Any delay of the review process will impede the development of a fully competitive telecommunications market in South Carolina, which will harm the consumers of this state. It is therefore in the public interest to hold the hearing on July 23, 2001.

For the foregoing reasons, this Commission should deny NewSouth's and SCCTA's Motion to Reconsider Scheduling Decision.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Reply to NewSouth Communications' and South Carolina Cable Television Association's Motion to Reconsider Scheduling Decision to be served by via facsimile and placing such in the care and custody of the United States Postal Service, with first-class postage affixed thereto and addressed to the following this June 11, 2001:

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